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 CITY OF BEAUMONT and DAVID  
 LYNN

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ROBERT DUH and SHARON  
 TEAGUE,

Plaintiffs,

v.

CITY OF BEAUMONT; DAVID  
 LYNN; and DOES 2-10, inclusive,

Defendants.

Case No. 5:17-cv-00831-JGB-DTB  
*[District Judge, Jesus G. Bernal;  
 Magistrate Judge David T. Bristow]*

**ANSWER OF DEFENDANTS TO  
 PLAINTIFFS' FIRST AMENDED  
 COMPLAINT: DEMAND FOR  
 JURY TRIAL**

Complaint Filed: 04/28/2017  
 Trial Date: Not Yet Set

Defendants CITY OF BEAUMONT and DAVID LYNN ("Defendants") hereby  
 Answer plaintiffs' First Amended Complaint on file herein (filed November 10, 2017) –  
 hereinafter referred to as the "Complaint") and defendants hereby admit, deny, and  
 allege as follows:

1. Answering paragraph 1 of the Complaint, under the header "Jurisdiction  
 and Venue": Defendants admit that this Court has jurisdiction of civil actions arising  
 under the Constitution, laws, or treaties of the United States, including claims arising  
 under 28 U.S.C. §§ 1331 and 1343. As to the remaining allegations of this paragraph,  
 at present, Defendants do not have sufficient knowledge, or information or belief, to

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1 enable Defendants to answer the remaining allegations contained within such  
2 paragraph, as stated, and on those grounds deny generally and specifically each and  
3 every remaining allegation contained therein.

4       2. Answering paragraph 2 of the Complaint, under the header "Jurisdiction  
5 and Venue": Defendants admit that claims arising from events that occurred in the  
6 County of Riverside, California, may be brought before the venue of this Court. As to  
7 the remaining allegations of this paragraph, at present, Defendants do not have  
8 sufficient knowledge, or information or belief, to enable Defendants to answer the  
9 remaining allegations contained within such paragraph, as stated, and on those grounds  
10 deny generally and specifically each and every remaining allegation contained therein.

11       3. Answering paragraph 3 of the Complaint, under the header "Introduction":  
12 Defendants admit that plaintiffs purport to bring this action as a civil rights action.  
13 Answering further, Defendants admit that plaintiffs allege the incident occurred on  
14 September 17, 2016, involving decedent Robert Duh, Jr. Defendants deny that  
15 plaintiffs are entitled to any relief. As to the remaining allegations of this paragraph, at  
16 present, Defendants do not have sufficient knowledge, or information or belief, to  
17 enable Defendants to answer the remaining allegations contained within such  
18 paragraph, as stated, and on those grounds deny generally and specifically each and  
19 every remaining allegation contained therein.

20       4. Answering paragraph 4 of the Complaint, under the header "Parties":  
21 Defendants do not have sufficient knowledge, or information or belief, to enable  
22 Defendants to answer the allegation contained within this paragraph regarding decedent  
23 Robert Duh, Jr.'s residency, and on that ground deny generally and specifically the  
24 allegation contained therein.

25       5. Answering paragraph 5 of the Complaint, under the header "Parties":  
26 Defendants do not have sufficient knowledge, or information or belief, to enable  
27 Defendants to answer the allegation contained within this paragraph regarding plaintiff  
28 Robert Duh's residency, and on that ground deny generally and specifically the

1 allegation contained therein. As to the remaining allegations of this paragraph, at  
 2 present, Defendants do not have sufficient knowledge, or information or belief, to  
 3 enable Defendants to answer the remaining allegations contained within such  
 4 paragraph, as stated, and on those grounds deny generally and specifically each and  
 5 every remaining allegation contained therein.

6         6. Answering paragraph 6 of the Complaint, under the header "Parties":  
 7 Defendants do not have sufficient knowledge, or information or belief, to enable  
 8 Defendants to answer the allegation contained within this paragraph regarding plaintiff  
 9 Sharon Teague's residency, and on that ground deny generally and specifically the  
 10 allegation contained therein. As to the remaining allegations of this paragraph, at  
 11 present, Defendants do not have sufficient knowledge, or information or belief, to  
 12 enable Defendants to answer the remaining allegations contained within such  
 13 paragraph, as stated, and on those grounds deny generally and specifically each and  
 14 every remaining allegation contained therein.

15         7. Answering paragraph 7 of the Complaint, under the header "Parties":  
 16 Defendants admit that the City of Beaumont is an incorporated municipality in  
 17 California. As to the remaining allegations of this paragraph, at present, Defendants do  
 18 not have sufficient knowledge, or information or belief, to enable Defendants to answer  
 19 the remaining allegations contained within such paragraph, as stated, and on those  
 20 grounds deny generally and specifically each and every remaining allegation contained  
 21 therein.

22         8. Answering paragraph 8 of the Complaint, under the header "Parties":  
 23 Defendants do not have sufficient knowledge, or information or belief, to enable  
 24 Defendants to answer the allegation contained within this paragraph regarding decedent  
 25 Robert Duh, Jr.'s residency, and on that ground deny generally and specifically the  
 26 allegation contained therein.

27         9. Answering paragraph 9 of the Complaint, under the header "Parties":  
 28 Defendants do not have sufficient knowledge, or information or belief, to enable

1 Defendants to answer the allegations contained within this paragraph, as stated, and on  
2 those grounds deny generally and specifically each and every allegation contained  
3 therein.

4 10. Answering paragraph 10 of the Complaint, under the header "Parties":  
5 Defendants do not have sufficient knowledge, or information or belief, to enable  
6 Defendants to answer the allegations contained within this paragraph, as stated, and on  
7 those grounds deny generally and specifically each and every allegation contained  
8 therein.

9 11. Answering paragraph 11 of the Complaint, under the header "Parties":  
10 Defendants do not have sufficient knowledge, or information or belief, to enable  
11 Defendants to answer the allegations contained within this paragraph, as stated, and on  
12 those grounds deny generally and specifically each and every allegation contained  
13 therein.

14 12. Answering paragraph 12 of the Complaint, under the header "Parties":  
15 Defendants do not have sufficient knowledge, or information or belief, to enable  
16 Defendants to answer the allegations contained within this paragraph, as stated, and on  
17 those grounds deny generally and specifically each and every allegation contained  
18 therein.

19 13. Answering paragraph 13 of the Complaint, under the header "Parties":  
20 Defendants do not have sufficient knowledge, or information or belief, to enable  
21 Defendants to answer the allegations contained within this paragraph, as stated, and on  
22 those grounds deny generally and specifically each and every allegation contained  
23 therein.

24 14. Answering paragraph 14 of the Complaint, under the header "Parties":  
25 Defendants do not have sufficient knowledge, or information or belief, to enable  
26 Defendants to answer the allegations contained within this paragraph, as stated, and on  
27 those grounds deny generally and specifically each and every allegation contained  
28 therein.

1           15. Answering paragraph 15 of the Complaint, under the header "Parties":  
2 Defendants do not have sufficient knowledge, or information or belief, to enable  
3 Defendants to answer the allegations contained within this paragraph, as stated, and on  
4 those grounds deny generally and specifically each and every allegation contained  
5 therein.

6           16. Answering paragraph 16 of the Complaint, under the header "Parties":  
7 Defendants do not have sufficient knowledge, or information or belief, to enable  
8 Defendants to answer the allegations contained within this paragraph, as stated, and on  
9 those grounds deny generally and specifically each and every allegation contained  
10 therein.

11           17. Answering paragraph 17 of the Complaint, under the header "Parties":  
12 Defendants do not have sufficient knowledge, or information or belief, to enable  
13 Defendants to answer the allegations contained within this paragraph, as stated, and on  
14 those grounds deny generally and specifically each and every allegation contained  
15 therein.

16           18. Answering paragraph 18 of the Complaint, under the header "Parties":  
17 Defendants do not have sufficient knowledge, or information or belief, to enable  
18 Defendants to answer the allegations contained within this paragraph, as stated, and on  
19 those grounds deny generally and specifically each and every allegation contained  
20 therein.

21           19. Answering paragraph 19 of the Complaint, under the header "Facts  
22 Common to All Claims for Relief": Defendants repeat, reiterate and reallege all of the  
23 admissions and denials contained in the foregoing Answer which are set forth to each  
24 and every allegation contained in paragraphs 1 through 18, inclusive, of plaintiffs'  
25 Complaint.

26           20. Answering paragraph 20 of the Complaint, under the header "Facts  
27 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
28 information or belief, to enable Defendants to answer the allegations contained within

1 this paragraph, as stated, and on those grounds deny generally and specifically each and  
2 every allegation contained therein.

3 21. Answering paragraph 21 of the Complaint, under the header "Facts  
4 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
5 information or belief, to enable Defendants to answer the allegations contained within  
6 this paragraph, as stated, and on those grounds deny generally and specifically each and  
7 every allegation contained therein.

8 22. Answering paragraph 22 of the Complaint, under the header "Facts  
9 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
10 information or belief, to enable Defendants to answer the allegations contained within  
11 this paragraph, as stated, and on those grounds deny generally and specifically each and  
12 every allegation contained therein.

13 23. Answering paragraph 23 of the Complaint, under the header "Facts  
14 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
15 information or belief, to enable Defendants to answer the allegations contained within  
16 this paragraph, as stated, and on those grounds deny generally and specifically each and  
17 every allegation contained therein.

18 24. Answering paragraph 24 of the Complaint, under the header "Facts  
19 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
20 information or belief, to enable Defendants to answer the allegations contained within  
21 this paragraph, as stated, and on those grounds deny generally and specifically each and  
22 every allegation contained therein.

23 25. Answering paragraph 25 of the Complaint, under the header "Facts  
24 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
25 information or belief, to enable Defendants to answer the allegations contained within  
26 this paragraph, as stated, and on those grounds deny generally and specifically each and  
27 every allegation contained therein.

28 26. Answering paragraph 26 of the Complaint, under the header "Facts



1 Common to All Claims for Relief": Defendants do not have sufficient knowledge, or  
2 information or belief, to enable Defendants to answer the allegations contained within  
3 this paragraph, as stated, and on those grounds deny generally and specifically each and  
4 every allegation contained therein.

5 27. Answering paragraph 27 of the Complaint, under the header "First Claim  
6 for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials  
7 contained in the foregoing Answer which are set forth to each and every allegation  
8 contained in paragraphs 1 through 26, inclusive, of plaintiffs' Complaint.

9 28. Answering paragraph 28 of the Complaint, under the header "First Claim  
10 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
11 enable Defendants to answer the allegations contained within this paragraph, as stated,  
12 and on those grounds deny generally and specifically each and every allegation  
13 contained therein.

14 29. Answering paragraph 29 of the Complaint, under the header "First Claim  
15 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
16 enable Defendants to answer the allegations contained within this paragraph, as stated,  
17 and on those grounds deny generally and specifically each and every allegation  
18 contained therein.

19 30. Answering paragraph 30 of the Complaint, under the header "First Claim  
20 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
21 enable Defendants to answer the allegations contained within this paragraph, as stated,  
22 and on those grounds deny generally and specifically each and every allegation  
23 contained therein.

24 31. Answering paragraph 31 of the Complaint, under the header "First Claim  
25 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
26 enable Defendants to answer the allegations contained within this paragraph, as stated,  
27 and on those grounds deny generally and specifically each and every allegation  
28 contained therein.

32. Answering paragraph 32 of the Complaint, under the header "First Claim for Relief": Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

33. Answering paragraph 33 of the Complaint, under the header "First Claim for Relief": Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

34. Answering paragraph 34 of the Complaint, under the header "First Claim for Relief": Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

35. Answering paragraph 35 of the Complaint, under the header "First Claim for Relief": Defendants deny that plaintiffs are entitled to any relief.

36. Answering paragraph 36 of the Complaint, under the header "Second Claim for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 35, inclusive, of plaintiffs' Complaint.

37. Answering paragraph 37 of the Complaint, under the header "Second Claim for Relief": Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

38. Answering paragraph 38 of the Complaint, under the header "Second Claim for Relief": Defendants do not have sufficient knowledge, or information or



1 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 2 as stated, and on those grounds deny generally and specifically each and every  
 3 allegation contained therein.

4       39. Answering paragraph 39 of the Complaint, under the header "Second  
 5 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 6 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 7 as stated, and on those grounds deny generally and specifically each and every  
 8 allegation contained therein.

9       40. Answering paragraph 40 of the Complaint, under the header "Second  
 10 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 11 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 12 as stated, and on those grounds deny generally and specifically each and every  
 13 allegation contained therein.

14       41. Answering paragraph 41 of the Complaint, under the header "Second  
 15 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 16 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 17 as stated, and on those grounds deny generally and specifically each and every  
 18 allegation contained therein.

19       42. Answering paragraph 42 of the Complaint, under the header "Second  
 20 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 21 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 22 as stated, and on those grounds deny generally and specifically each and every  
 23 allegation contained therein.

24       43. Answering paragraph 43 of the Complaint, under the header "Second  
 25 Claim for Relief": Defendants deny that plaintiffs are entitled to any relief.

26       44. Answering paragraph 44 of the Complaint, under the header "Third Claim  
 27 for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials  
 28 contained in the foregoing Answer which are set forth to each and every allegation

1 contained in paragraphs 1 through 43, inclusive, of plaintiffs' Complaint.

2 45. Answering paragraph 45 of the Complaint, under the header "Third Claim  
3 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
4 enable Defendants to answer the allegations contained within this paragraph, as stated,  
5 and on those grounds deny generally and specifically each and every allegation  
6 contained therein.

7 46. Answering paragraph 46 of the Complaint, under the header "Third Claim  
8 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
9 enable Defendants to answer the allegations contained within this paragraph, as stated,  
10 and on those grounds deny generally and specifically each and every allegation  
11 contained therein.

12 47. Answering paragraph 47 of the Complaint, under the header "Third Claim  
13 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
14 enable Defendants to answer the allegations contained within this paragraph, as stated,  
15 and on those grounds deny generally and specifically each and every allegation  
16 contained therein.

17 48. Answering paragraph 48 of the Complaint, under the header "Third Claim  
18 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
19 enable Defendants to answer the allegations contained within this paragraph, as stated,  
20 and on those grounds deny generally and specifically each and every allegation  
21 contained therein.

22 49. Answering paragraph 49 of the Complaint, under the header "Third Claim  
23 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
24 enable Defendants to answer the allegations contained within this paragraph, as stated,  
25 and on those grounds deny generally and specifically each and every allegation  
26 contained therein.

27 50. Answering paragraph 50 of the Complaint, under the header "Third Claim  
28 for Relief": Defendants do not have sufficient knowledge, or information or belief, to

1 enable Defendants to answer the allegations contained within this paragraph, as stated,  
2 and on those grounds deny generally and specifically each and every allegation  
3 contained therein.

4 51. Answering paragraph 51 of the Complaint, under the header "Third Claim  
5 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
6 enable Defendants to answer the allegations contained within this paragraph, as stated,  
7 and on those grounds deny generally and specifically each and every allegation  
8 contained therein.

9 52. Answering paragraph 52 of the Complaint, under the header "Third Claim  
10 for Relief": Defendants deny that plaintiffs are entitled to any relief.

11 53. Answering paragraph 53 of the Complaint, under the header "Fourth Claim  
12 for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials  
13 contained in the foregoing Answer which are set forth to each and every allegation  
14 contained in paragraphs 1 through 52, inclusive, of plaintiffs' Complaint.

15 54. Answering paragraph 54 of the Complaint, under the header "Fourth Claim  
16 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
17 enable Defendants to answer the allegations contained within this paragraph, as stated,  
18 and on those grounds deny generally and specifically each and every allegation  
19 contained therein.

20 55. Answering paragraph 55 of the Complaint, under the header "Fourth Claim  
21 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
22 enable Defendants to answer the allegations contained within this paragraph, as stated,  
23 and on those grounds deny generally and specifically each and every allegation  
24 contained therein.

25 56. Answering paragraph 56 of the Complaint, under the header "Fourth Claim  
26 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
27 enable Defendants to answer the allegations contained within this paragraph, as stated,  
28 and on those grounds deny generally and specifically each and every allegation

1 contained therein.

2       57. Answering paragraph 57 of the Complaint, under the header "Fourth Claim  
3 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
4 enable Defendants to answer the allegations contained within this paragraph, as stated,  
5 and on those grounds deny generally and specifically each and every allegation  
6 contained therein.

7       58. Answering paragraph 58 of the Complaint, under the header "Fourth Claim  
8 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
9 enable Defendants to answer the allegations contained within this paragraph, as stated,  
10 and on those grounds deny generally and specifically each and every allegation  
11 contained therein.

12       59. Answering paragraph 59 of the Complaint, under the header "Fourth Claim  
13 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
14 enable Defendants to answer the allegations contained within this paragraph, as stated,  
15 and on those grounds deny generally and specifically each and every allegation  
16 contained therein.

17       60. Answering paragraph 60 of the Complaint, under the header "Fourth Claim  
18 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
19 enable Defendants to answer the allegations contained within this paragraph, as stated,  
20 and on those grounds deny generally and specifically each and every allegation  
21 contained therein.

22       61. Answering paragraph 61 of the Complaint, under the header "Fourth Claim  
23 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
24 enable Defendants to answer the allegations contained within this paragraph, as stated,  
25 and on those grounds deny generally and specifically each and every allegation  
26 contained therein.

27       62. Answering paragraph 62 of the Complaint, under the header "Fourth Claim  
28 for Relief": Defendants do not have sufficient knowledge, or information or belief, to

1 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 2 and on those grounds deny generally and specifically each and every allegation  
 3 contained therein.

4 63. Answering paragraph 63 of the Complaint, under the header "Fourth Claim  
 5 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 6 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 7 and on those grounds deny generally and specifically each and every allegation  
 8 contained therein.

9 64. Answering paragraph 64 of the Complaint, under the header "Fourth Claim  
 10 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 11 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 12 and on those grounds deny generally and specifically each and every allegation  
 13 contained therein.

14 65. Answering paragraph 65 of the Complaint, under the header "Fourth Claim  
 15 for Relief": Defendants deny that plaintiffs are entitled to any relief.

16 66. Answering paragraph 66 of the Complaint, under the header "Fourth Claim  
 17 for Relief": Defendants deny that plaintiffs are entitled to any relief.

18 67. Answering paragraph 67 of the Complaint, under the header "Fifth Claim  
 19 for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials  
 20 contained in the foregoing Answer which are set forth to each and every allegation  
 21 contained in paragraphs 1 through 66, inclusive, of plaintiffs' Complaint.

22 68. Answering paragraph 68 of the Complaint, under the header "Fifth Claim  
 23 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 24 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 25 and on those grounds deny generally and specifically each and every allegation  
 26 contained therein.

27 69. Answering paragraph 69 of the Complaint, under the header "Fifth Claim  
 28 for Relief": Defendants do not have sufficient knowledge, or information or belief, to

1 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 2 and on those grounds deny generally and specifically each and every allegation  
 3 contained therein.

4 70. Answering paragraph 70 of the Complaint, under the header "Fifth Claim  
 5 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 6 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 7 and on those grounds deny generally and specifically each and every allegation  
 8 contained therein.

9 71. Answering paragraph 71 of the Complaint, under the header "Fifth Claim  
 10 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 11 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 12 and on those grounds deny generally and specifically each and every allegation  
 13 contained therein.

14 72. Answering paragraph 72 of the Complaint, under the header "Fifth Claim  
 15 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 16 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 17 and on those grounds deny generally and specifically each and every allegation  
 18 contained therein. Defendants deny that plaintiffs are entitled to any relief.

19 73. Answering paragraph 73 of the Complaint, under the header "Fifth Claim  
 20 for Relief": Defendants deny that plaintiffs are entitled to any relief.

21 74. Answering paragraph 74 of the Complaint, under the header "Sixth Claim  
 22 for Relief": Defendants repeat, reiterate and reallege all of the admissions and denials  
 23 contained in the foregoing Answer which are set forth to each and every allegation  
 24 contained in paragraphs 1 through 73, inclusive, of plaintiffs' Complaint.

25 75. Answering paragraph 75 of the Complaint, under the header "Sixth Claim  
 26 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
 27 enable Defendants to answer the allegations contained within this paragraph, as stated,  
 28 and on those grounds deny generally and specifically each and every allegation



1 contained therein.

2 76. Answering paragraph 76 of the Complaint, under the header "Sixth Claim  
3 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
4 enable Defendants to answer the allegations contained within this paragraph, as stated,  
5 and on those grounds deny generally and specifically each and every allegation  
6 contained therein.

7 77. Answering paragraph 77 of the Complaint, under the header "Sixth Claim  
8 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
9 enable Defendants to answer the allegations contained within this paragraph, as stated,  
10 and on those grounds deny generally and specifically each and every allegation  
11 contained therein.

12 78. Answering paragraph 78 of the Complaint, under the header "Sixth Claim  
13 for Relief": Defendants do not have sufficient knowledge, or information or belief, to  
14 enable Defendants to answer the allegations contained within this paragraph, as stated,  
15 and on those grounds deny generally and specifically each and every allegation  
16 contained therein. Defendants deny that plaintiffs are entitled to any relief.

17 79. Answering paragraph 79 of the Complaint, under the header "Seventh  
18 Claim for Relief": Defendants repeat, reiterate and reallege all of the admissions and  
19 denials contained in the foregoing Answer which are set forth to each and every  
20 allegation contained in paragraphs 1 through 78, inclusive, of plaintiffs' Complaint.

21 80. Answering paragraph 80 of the Complaint, under the header "Seventh  
22 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
23 belief, to enable Defendants to answer the allegations contained within this paragraph,  
24 as stated, and on those grounds deny generally and specifically each and every  
25 allegation contained therein.

26 81. Answering paragraph 81 of the Complaint, under the header "Seventh  
27 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
28 belief, to enable Defendants to answer the allegations contained within this paragraph,

1 as stated, and on those grounds deny generally and specifically each and every  
 2 allegation contained therein.

3 82. Answering paragraph 82 of the Complaint, under the header "Seventh  
 4 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 5 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 6 as stated, and on those grounds deny generally and specifically each and every  
 7 allegation contained therein.

8 83. Answering paragraph 83 of the Complaint, under the header "Seventh  
 9 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 10 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 11 as stated, and on those grounds deny generally and specifically each and every  
 12 allegation contained therein.

13 84. Answering paragraph 84 of the Complaint, under the header "Seventh  
 14 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 15 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 16 as stated, and on those grounds deny generally and specifically each and every  
 17 allegation contained therein.

18 85. Answering paragraph 85 of the Complaint, under the header "Seventh  
 19 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 20 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 21 as stated, and on those grounds deny generally and specifically each and every  
 22 allegation contained therein.

23 86. Answering paragraph 86 of the Complaint, under the header "Seventh  
 24 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
 25 belief, to enable Defendants to answer the allegations contained within this paragraph,  
 26 as stated, and on those grounds deny generally and specifically each and every  
 27 allegation contained therein.

28 87. Answering paragraph 87 of the Complaint, under the header "Seventh

1 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
2 belief, to enable Defendants to answer the allegations contained within this paragraph,  
3 as stated, and on those grounds deny generally and specifically each and every  
4 allegation contained therein.

5 88. Answering paragraph 88 of the Complaint, under the header "Seventh  
6 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
7 belief, to enable Defendants to answer the allegations contained within this paragraph,  
8 as stated, and on those grounds deny generally and specifically each and every  
9 allegation contained therein.

10 89. Answering paragraph 89 of the Complaint, under the header "Seventh  
11 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
12 belief, to enable Defendants to answer the allegations contained within this paragraph,  
13 as stated, and on those grounds deny generally and specifically each and every  
14 allegation contained therein.

15 90. Answering paragraph 90 of the Complaint, under the header "Seventh  
16 Claim for Relief": Defendants do not have sufficient knowledge, or information or  
17 belief, to enable Defendants to answer the allegations contained within this paragraph,  
18 as stated, and on those grounds deny generally and specifically each and every  
19 allegation contained therein. Defendants deny that plaintiffs are entitled to any relief.

20 91. Answering paragraph 91 of the Complaint, under the header "Seventh  
21 Claim for Relief": Defendants deny that plaintiffs are entitled to any relief.

22 92. Answering plaintiffs' Prayer for Relief, Defendants deny all liability to  
23 plaintiffs, including, but not limited to, all liability for any damages (general, special,  
24 exemplary or otherwise), penalties, fees, or costs of any kind, or for any relief of any  
25 kind from any of the Defendants to any of the plaintiffs.

26 93. To the extent plaintiff(s) assert(s) any other claims or contentions not  
27 specifically addressed herein above, Defendants generally and specifically deny each  
28 and every remaining allegation and/or claim.

**AFFIRMATIVE DEFENSES**

94. As separate and affirmative defenses, defendants allege as follows<sup>1</sup>:

**FIRST AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

95. Plaintiffs' Complaint, and each alleged cause of action in it, fails to state a claim upon which relief can be granted.

96. Plaintiffs' Complaint also fails to state a claim against any defendant in this action.

97. Plaintiffs' and/or decedent's claims are time-barred by the operative statute(s) of limitations (including, but not limited to, California Code of Civil Procedure § 335.1).

**SECOND AFFIRMATIVE DEFENSE**

**(Tort Claims Act Violation)**

98. This action is barred by the Plaintiffs' failure to comply with the government tort claims presentation requirements, California Government Code § 900, *et seq.*, including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2, 911.4, 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

99. The Complaint is barred based on plaintiffs' failure to exhaust administrative remedies prior to filing this lawsuit.

100. Plaintiffs' recovery is barred for failure to timely comply with the provisions of the claims statutes, including, but not limited to California Government Code §§ 901, 905, 905.2, 911.2, 945.4, 945.6, 950.2.

101. Plaintiffs' recovery is barred because the causes of action stated in the complaint do not correspond with the legal claims asserted in plaintiffs' written claim.

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<sup>1</sup> For purposes of the affirmative defenses, affirmative defenses that reference "plaintiffs" shall also be construed to apply, wherever feasible, to plaintiffs' decedent.

1 The Complaint thereby alleges legal bases for recovery which are not fairly reflected in  
2 the written claim.

### 3 **THIRD AFFIRMATIVE DEFENSE**

#### 4 **(Waiver, Estoppel, Unclean Hands)**

5 102. Defendants allege that plaintiffs' action is barred by reason of conduct,  
6 actions and inactions of plaintiffs which amount to and constitute a waiver of any right  
7 plaintiffs may or might have had in reference to the matters and things alleged in the  
8 Complaint, or that otherwise estop plaintiffs from recovery in this action, including but  
9 not limited to the doctrine of unclean hands.

### 10 **FOURTH AFFIRMATIVE DEFENSE**

#### 11 **(Failure to Mitigate Damages)**

12 103. Plaintiffs' claims are barred or limited to the extent plaintiffs failed to  
13 mitigate plaintiffs' injuries or damages, if there were any. Plaintiffs have failed to  
14 mitigate the damages, if any, which plaintiffs have sustained, and to exercise reasonable  
15 care to avoid the consequences of harms, if any, in that, among other things, plaintiffs  
16 have failed to use reasonable diligence in caring for any injuries, failed to use  
17 reasonable means to prevent aggravation of any injuries and failed to take reasonable  
18 precautions to reduce any injuries and damages.

### 19 **FIFTH AFFIRMATIVE DEFENSE**

#### 20 **(Contributory and/or Comparative Liability)**

21 104. Plaintiffs' claims are barred or limited by plaintiffs' and/or decedent's  
22 contributory/comparative negligence or other conduct, acts, or omissions, and to the  
23 extent any plaintiffs suffered any injury or damages, it was the result of plaintiffs'  
24 and/or decedent's own negligent or deliberate actions or omissions.

25 105. Plaintiffs' recovery is barred because any injury or damage suffered by  
26 plaintiffs' decedent and/or to plaintiffs was caused solely by reason of the plaintiffs'  
27 decedent's wrongful acts and conduct and the willful resistance to a peace officer in the  
28 discharge their duties. The conduct set forth in the Complaint, if and to the extent it

1 occurred, was privileged and justified and done with a good faith belief that it was  
 2 correct and no action may be taken against the answering defendants on account of such  
 3 conduct.

#### 4 **SIXTH AFFIRMATIVE DEFENSE**

##### 5 **(Public Entity/Employee Immunity for Others' Torts)**

6 106. Plaintiffs' recovery is barred because public entities and employees are  
 7 immune from liability for any injury caused by the act or omission of another person.  
 8 Gov. Code §§ 815 *et seq.*, 820.2 *et seq.*

9 107. The answering defendants are informed and believe and thereon allege that  
 10 if plaintiffs sustained any injury or damages, such injury or damages were solely caused  
 11 or contributed to by the wrongful conduct of other defendants and/or entities or persons  
 12 other than the answering defendants. To the extent that plaintiffs' damages were so  
 13 caused, any recovery by plaintiffs as against the answering defendants should be  
 14 subject to proportionately comparative equitable indemnity/contribution from such  
 15 third parties.

#### 16 **SEVENTH AFFIRMATIVE DEFENSE**

##### 17 **(Public Entity/Employee Immunity for Discretionary Acts)**

18 108. There is no liability for any injury or damages, if any there were, resulting  
 19 from an exercise of discretion vested in a public employee, whether or not such  
 20 discretion be abused. Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

21 109. Plaintiffs' recovery is barred because public entities and employees are  
 22 immune from liability for discharging their mandatory duties with reasonable diligence.

23 110. A public employee may not be held liable for injuries or damages, if any,  
 24 caused by failure to adopt or by adoption of an enactment or by failure to enforce an  
 25 enactment and/or law, for an injury caused by his issuance, denial, suspension or  
 26 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,  
 27 license, certificate, approval, order, or similar authorization, where he is authorized by  
 28 enactment to determine whether or not such authorization should be issued, denied,



1 suspended or revoked, pursuant to Government Code §§ 818.2, 818.4, 818.8, 821 and  
 2 821.2. Based thereon, each of the answering defendants are immune from liability for  
 3 any injuries claimed by plaintiffs, herein.

4 111. Defendants are immune for any detriment resulting from any of its actions  
 5 or omissions at the time of the incident of which plaintiff complains pursuant to  
 6 Government Code § 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including, but  
 7 not limited to, §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8,  
 8 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and  
 9 Government Code §§ 854, *et seq.*, including, but not limited to, §§ 845.6, 854.6,  
 10 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

## 11 **EIGHTH AFFIRMATIVE DEFENSE**

### 12 **(Public Entity Immunity)**

13 112. To the extent that the Complaint attempts to predicate liability upon any  
 14 public entity defendants or any employees thereof for purported negligence in retention,  
 15 hiring, employment, training, or supervision of any public employee, such liability is  
 16 barred by Government Code sections 815.2 and 820.2 and *Herndon v. County of Marin*  
 17 (1972) 25 Cal. App. 3d 933, 935, 936, *rev'd on other grounds by Sullivan v. County of*  
 18 *Los Angeles* (1974) 12 Cal.3d 710; and by the lack of any duty running to any  
 19 plaintiffs; by the fact that any such purported act or omission is governed exclusively  
 20 by statute and is outside the purview of any public employees' authority; and by the  
 21 failure of any such acts or omissions to be the proximate or legal cause of any injury  
 22 alleged in the Complaint. *See de Villers v. County of San Diego*, 156 Cal.App.4th 238,  
 23 251-253, 255-256 (2007).

24 113. Defendants may not be held liable on a *respondeat superior* theory for any  
 25 negligent or wrongful act or omission on the part of any subordinate. Cal. Government  
 26 Code §§ 844.6, 845.6; Cal. Civil Code § 2351; *Malloy v. Fong* (1951) 37 Cal.2d 356,  
 27 378-379; *Monell v. Department of Social Services of the City of New York* (1978) 436  
 28 U.S. 658; *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630, 645-646; *cf. City*

1 of *Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los Angeles v. Heller*, 475  
 2 U.S. 796 (1986).

### 3 **NINTH AFFIRMATIVE DEFENSE**

#### 4 **(Qualified Immunity & Good Faith Immunity)**

5 114. Defendants and their agents or officers at all times relevant to this action  
 6 acted reasonably and prudently under the circumstances. Defendants therefore assert  
 7 the individual defendants' Qualified Immunity from liability to the fullest extent  
 8 applicable.

9 115. Defendant(s) is/are immune from liability under the Federal Civil Rights  
 10 Act because they acted in good faith with an honest and reasonable belief that their  
 11 actions were necessary and appropriate. Defendant(s) is/are immune from liability  
 12 under the Federal Civil Rights Act because a reasonable police officer could believe  
 13 that their acts and conduct were appropriate. Defendant(s) is/are immune from liability  
 14 under the Federal Civil Rights Act because their conduct did not violate clearly  
 15 established rights. Defendant(s) is/are also immune from liability under the doctrine of  
 16 Qualified Immunity.

17 116. At all relevant times, defendants acted within the scope of discretion, with  
 18 due care, and good faith fulfillment of responsibilities pursuant to applicable statutes,  
 19 rules and regulation, within the bounds of reason, and with the good faith belief that  
 20 their actions comported with all applicable federal and state laws. *Harlow v. Fitzgerald*  
 21 (1982) 457 U.S. 800; Cal Gov. Code §§ 815.2 and 820.2.

### 22 **TENTH AFFIRMATIVE DEFENSE**

#### 23 **(Assumption of Risk)**

24 117. At the time and place referred to in the Complaint, and before such event,  
 25 plaintiffs' decedent knew, appreciated, and understood each and every risk involved in  
 26 placing himself in the position which plaintiff then assumed, and willingly, knowingly  
 27 and voluntarily assumed each of such risks, including, but not limited to, the risk of  
 28 suffering personal bodily injury, lawful deprivation of right(s), or death.

**ELEVENTH AFFIRMATIVE DEFENSE**

118. Defendant(s) affirmatively pleads that it cannot be liable to Plaintiffs for exemplary damages because it at no time acted maliciously, fraudulently or with an intent to harm plaintiffs or to deprive them of any legally protected rights.

**TWELFTH AFFIRMATIVE DEFENSE**

119. Defendant(s) affirmatively pleads that, in this action, plaintiffs are precluded from seeking attorney fees under California Code of Civil Procedure section 1021.5. Plaintiffs' complaint is not pleaded as a private attorney general action. Nowhere in plaintiffs' complaint do plaintiffs identify any important right affecting the public interest that they seek to enforce by making this action. Nowhere in plaintiffs' complaint do plaintiffs identify any significant benefit, whether pecuniary or nonpecuniary, that is to be conferred on the general public or a large class of persons, by reason of plaintiffs' making this action.

**THIRTEENTH AFFIRMATIVE DEFENSE**

120. Defendant(s) contends that it cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiffs' complaint. Accordingly, Defendant(s) expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

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**JURY DEMAND**

121. Defendants demand a trial by jury as to each issue triable by jury.

**PRAYER FOR RELIEF**

WHEREFORE, the answering Defendant(s) pray as follows:

1. That Plaintiff(s) take nothing by this action;
2. That Defendant(s) be awarded attorneys' fees and costs of this suit and costs of proof; and that Defendant(s) be awarded such other relief as the Court deems just.

DATED: December 6, 2017

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

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